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Promotion and protection of all human rights, civil, political, economic, social and cultural rights, including the right to development

Information presented by the National Human Rights Council of Morocco*.

Note by the Secretariat

The Secretariat of the Human Rights Council hereby transmits the communication submitted by the National Human Rights Council of Morocco,** reproduced below in accordance with rule 7(b) of the rules of procedures described in the annex to Council resolution 5/1, according to which participation of national human rights institutions is to be based on arrangements and practices agreed upon by the Commission on Human Rights, including resolution 2005/74 of 20 April 2005.

* National human rights institution with "A"-status accreditation from the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights.

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Annex

[English only]

Information presented by the National Human Rights Council of Morocco concerning Children in Protection Centres: Childhood at risk for an integrated policy to protect children's rights.

In fulfillment of its mandate and prerogatives, the National Human Rights Council *(Conseil national des droits de l'Homme - CNDH)* has analyzed, on its own initiative, the situation of children held by virtue of a court order in child protection centers and the protection of their rights. The objective of this analysis is to assess to what extent the conditions in these centers comply with the standards of the international Convention on the Rights of the Child (CRC).

Fruit of this analysis, CNDH's thematic report was drafted in follow-up to the implementation of the relevant national and international recommendations and observations and in line with a national context characterized by numerous reforms designed to guarantee the promotion and protection of human rights in general and children's rights in particular.

To prepare this report, the Council adopted a participatory approach with all State actors concerned (at central and local levels) as well as associations, children and families, taking into account the gender dimension. One of the main steps of this study was a field survey which included the visit of 17 child protection centers.

Child protection centers are socio-educational institutions affiliated to the Ministry of Youth and Sports. Children in conflict with the law and children in difficult circumstances are institutionalized in these centers by virtue of a court ruling. These centers are mandated to ensure the rehabilitation and reintegration of children. They are composed of three sections (observation sections, rehabilitation sections, and social welfare homes). In total, there are twenty child protection centers (national and regional centers and social welfare homes), three of which are currently closed for renovations. Their total accommodation capacity is 1852 (1252 boys and 600 girls), but their occupancy rate fluctuates strongly and their geographical distribution is uneven.

In addition to child protection centers, there are open custody institutions of two kinds: the probation system and the monitoring system.

The report outlines the international normative framework related to the institutionalization of children, particularly the CRC that Morocco ratified in 1993 and other relevant instruments related to the protection of the rights of children in contact with the law. It also highlights General Comment No. 10 of the Committee on the Rights of the Child which requires States parties to develop and implement a comprehensive juvenile justice policy based on the application of general principles and the provisions of the CRC. This policy should include the prevention of juvenile delinquency, the introduction of alternative measures allowing for responses to juvenile delinquency without resorting to judicial procedures, etc.

Second, based on the analysis of the national normative framework, the report stresses that national laws on juvenile justice are in conformity with the provisions of the CRC

thanks to the various legislative reforms undertaken, in particular the amendment of the Criminal Procedure Code and the Criminal Code.

Indeed, these legislative reforms are a genuine innovation in the protection of children in difficult circumstances. Judges could, in the past, intervene only when the child was either the victim of a felony or a misdemeanor or the perpetrator of an offence. Now the court can intervene earlier, when the child is in danger, giving priority to keeping the child with the parents, guardian, dative tutor, the person taking care of him or responsible for his care or any trustworthy person. If need be, the court can order to place the child in a state institution or in a capacitated non-profit association.

As is the case in the area of juvenile penal justice, these reforms have allowed substantial achievements in protecting the best interests of the child, in perfect harmony with the measures and safeguards set out in Article 40.2 of the CRC, mainly by raising the age of criminal responsibility to eighteen, providing for enforcement judge for juveniles, replacing police custody by the institutionalization of minors, providing for legal assistance, putting in place the probation system and reducing the length of custodial sentences applicable to minors. Moreover, the CRC contains specific provisions for children in conflict with the law aiming at adapting justice to this particular population.

However, there are many shortcomings relating to **the effective enforcement of legislation** due to the lack of resources, capacity and control, frequently leading to child institutionalization. This institutionalization is often unjustified, and sometimes against the best interests of the child. In addition, the terms of child participation in judicial proceedings do not fully comply with the international juvenile justice standards, particularly as regards the right to be heard and to be represented by a well-trained lawyer.

At the institutional level, although the Ministry of Youth and Sports is the ministry in charge of child protection centers, the Ministry of Justice and Liberties plays a role of paramount importance in the judicial protection of children in contact with the law and the decision of their institutionalization. It should be noted that other government departments are also involved, through their prerogatives, in the protection of children in difficult circumstances, particularly the Ministry of Solidarity, Women, Family and Social Development, the Ministry of Health, the Ministry of Education, the Ministry of Vocational Training, and the National Mutual Aid Department (*Entraide Nationale*).

The lack of a comprehensive policy for minors, the weak institutional capacity, the unclear roles and responsibilities as well as the inadequate coordination between the different departments do not contribute to providing appropriate protection and care consistent with laws and the rights of the child.

Civil society is also a major player in the protection and care of children in contact with the law. However, while its contribution is significant in this regard, it faces many challenges, especially in terms of necessary and sustainable human and material resources. Also, partnerships between state bodies and associations are not always properly established (unclear identification of the role of each one of them, of the actions and the means that each should assume the lack of monitoring and assessment procedures and the absence of penalties for breaches).

The analysis of the situation of institutionalized children, based on the results of visits and interviews conducted by the CNDH from November 15 to 29, 2012, highlights the following findings:

- The use of institutionalization and deprivation of liberty is often the first resort ;
- The centers are home to children whose profiles, ages and situations vary markedly. Children in difficult circumstances (children removed from their adverse family environment, abandoned children and rootless or children begging in the streets) are

held in a closed institution, deprived of their liberty and sharing the same facilities with children in conflict with the law who are awaiting trial or serving a sentence. This does not allow an appropriate and adapted care for children, and raises the problem of security and protection of vulnerable children, especially those aged under 12 and children with disabilities;

- There are significant differences in terms of occupancy rate in the Child protection centers; some have a very low occupancy rate while others are overcrowded. This is particularly the case of girls shelters whose number hardly amounts to five;
- Some children are institutionalized in centers located away from their place of residence and therefore from their families because of the geographical distribution of centers and the institutionalization of children according to the availability of places. In addition, some centers are very far away from court district. This poses difficulties for judicial monitoring, family inquiries and the maintenance of family ties;
- The centers are not governed by standards consistent with international norms required for the reception and care of children (physical and material standards, child/staff ratio, supervision quality, child safety and protection, program quality and complaint mechanisms in case of abuse or ill-treatment). The centers are not subject to regular supervision and monitoring by the authority in charge;
- Overall, the living conditions (housing, health and food) do not guarantee the fundamental rights of institutionalized children;
- The rights of institutionalized children are not fully guaranteed, especially the rights to health, physical integrity, protection against all forms of violence, abuse and exploitation, appropriate rehabilitation and participation. The same applies to the right to be heard, protected and legally assisted throughout the judicial proceedings. The right of children to have access to their families is also not fully guaranteed as families are not adequately involved and family ties are not strengthened;
- A large number of institutionalized children are victim of corporal punishment, bullying and verbal abuse;
- Children's right to access to independent complaint mechanisms, to ensure their protection, is not guaranteed;
- Some children spend more than three months in the observation section without being brought before a judge;
- Children running away reflects their discomfort and the inadequate support provided to some of them, in particular those with behavioral disorders and addictions who should benefit from a specific treatment;
- The post-center monitoring of children in open custody is not functional, which greatly affects their right to social reintegration.
- The causal analysis of child institutionalization reveals that institutionalization has many reasons that should be known in order to implement appropriate preventive measures. The absence of a protective family environment, drug addiction and juvenile delinquency are often the causes of institutionalization, especially with the lack of alternatives:
- Due to the lack of a family policy (psychosocial, socioeconomic and parenting) and alternatives to institutionalization (difficult access to the Kafala and the lack of mechanisms regulating the host families), children without adequate family environment are held in child protection centres;
- Drug addict children are treated as delinquents and are held in institutions that are not equipped for their situation and care;

- The deprivation of liberty, even for children who have committed minor offenses, is used as a first resort due to the absence of alternative measures and delinquency prevention programs.

In conclusion, the findings of CNDH's visits to the child protection centers show that **the institutionalization of children in these centers is not compliant with the norms and standards of the UN Convention on the Rights of the Child**. Noncompliance with the provisions of the Convention is obvious in all stages of the institutionalization process.

In order to bring the institutionalization of children in line with the principles and provisions of the CRC, the National Human Rights Council makes several recommendations:

1. Recommendations to the Government

1.1. In terms of the public policy

Adopt a national policy for a comprehensive protection of children, based on the application of the CRC's general principles and provisions. This national policy should include: a child-friendly justice; comprehensive care and follow-up programs easily accessible to children in contact with the law, be they victims, witnesses, offenders or in difficult circumstances; family and parenting support programs; prevention; alternative measures to deprivation of liberty; and alternatives to institutionalization. This policy should provide for the necessary human and material resources, and be subject to monitoring and evaluation mechanisms and accountability arrangements;

Clearly identify the authority responsible for the coordination of the implementation and monitoring of the national policy for the comprehensive protection of children;

Clarify the roles and responsibilities of key ministries and departments concerned, particularly the Ministry of Justice and Liberties, the Ministry of Youth and Sports, the Ministry of Solidarity, Women, Family and Social Development, and the National Mutual Aid Department.

1.2. In terms of training and capacity building

Adopt a training strategy (for initial and continuing training) for the different stakeholders concerned with children in contact with the law: police and gendarmerie officers, judges, public prosecutors, investigating judges, centers' educating teams and directors, social assistants/family investigators, lawyers.

2. Recommendations to the Ministry of Justice and Liberties

Use the deprivation of liberty only as a last resort;

Prefer open custody to the institutionalization of children in difficult situation;

Provide for the human and material resources necessary for the effective enforcement of laws and judicial procedures in order to guarantee for children the right to be informed and heard, the right to adequate legal assistance and the right to protection and proper and quality care ;

Ensure systematic monitoring and assessment of law enforcement.

3. Recommendations to the Ministry of Youth and Sport (in terms of childcare facilities)

Establish standards consistent with the requirements of children's rights;

Develop and implement mechanisms and arrangements for the supervision/control of these institutions, in order to assess their compliance with the established standards, including dignity, participation, protection and development, all standards that contribute to ensuring the best interests of the child ;

Put in place a centralized and reliable information system to monitor the numbers and the situation of institutionalized children.

4. A recommendation to provide a grievance redress mechanisms for children

In order to protect children against all forms of violence, ill-treatment, abuse or exploitation, it is necessary to provide for and have a grievance redress mechanisms for children that should be independent and easily accessible to all children without any discrimination and guarantee the protection and best interests of the child.

5. Urgent recommendations

Considering the worrying situation of a large number of institutionalized children, pending the implementation of the recommendations raised herein, the National Human Rights Council recommends the relevant bodies in charge, affiliated to the Ministry of Justice and Liberties and the Ministry of Youth and Sports, to promptly conduct an assessment of the current situation of institutionalized children in order to:

Review the judicial measures, regardless of their nature, in order to give children the guarantees provided for in the law;

Assess the health situation of children and provide them with the necessary medical care;

Promptly undertake the pending family investigations in order to allow judges to review the institutionalization decision of some children and reintegrate them with their families whenever possible, taking into account the best interest of the child.